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COMPANY

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

| | | |
|----------------------------------|---|---|
| JAMES BOSCH, |) | Case No. C04-3837 SBA |
| |) | |
| Plaintiff, |) | STIPULATION AND MODIFIED |
| |) | PROPOSED ORDER RE 15-DAY |
| v. |) | EXTENSION OF DEADLINE FOR FILING |
| |) | PRETRIAL MATERIALS |
| FIRST FINANCIAL INSURANCE |) | |
| COMPANY, and DOES 1 through 100, |) | Date: April 27, 2006 |
| |) | Ctrm: 3 |
| Defendants. |) | The Honorable Saundra Brown Armstrong |
| |) | Trial: June 5, 2006 |

The parties hereto, by and through their respective counsel of record, hereby submit this joint stipulated ex parte request for relief.

At the outset, the parties wish to express that this request is not made lightly, as the parties are keenly mindful of the court's sentiments expressed in its last order dated April 5, 2006. By neither this request, nor any others, do they intend to portray any attitude of disregard for the Court's explicit directives or to attempt any circumvention of the Court's pretrial orders in any way. On the contrary, the parties respect the current schedule established by the court and intend to continue honoring it.

1 **A. The Status Quo**

2 The parties have filed cross motions on the underlying insurance coverage issue
3 which forms the basis for this insurance breach of contract and insurance bad faith
4 action. Defendant's motion for summary judgment, and plaintiff's motion for partial
5 summary judgment based on those issues, both are pending before the court and
6 scheduled to be heard on May 2, 2006.

7 Pursuant to the "Order for Pretrial Preparation" designated Document 25 and
8 filed on April 29, 2005, a number of pretrial materials are due to be served, filed and/or
9 lodged with the court on the same day as the court is to consider the dispositive
10 motions - May 2, 2005. (Order for Pretrial Preparation at 2:23-4:20.)

11 These required materials are due in advance of the Pretrial Conference set for
12 May 24, 2006.

13 The parties are scheduled to attend a mandatory settlement conference before
14 Magistrate Judge Spero on May 15, 2006.

15 **B. Relief Requested**

16 By this application, the parties respectfully request a 15-day week extension, or
17 up to and including May 17, 2006, within which to file the pretrial materials. The
18 proposed new deadline would still fall on a date that is **one week before** the pretrial
19 conference with the court and nearly **three weeks before trial**.

20 Regardless of the date on which the pretrial materials are to be submitted, the
21 parties will be fully prepared for the May 24 pretrial conference as well as the trial that is
22 set for June 5, 2006. The parties are not requesting a commensurate continuance of
23 either the trial date or the pretrial conference.

24 **C. Grounds for Request**

25 **1. Dispositive Cross Motions Are Still Pending**

26 This request is made on the grounds that the parties would be unable to provide
27 the court with accurate, complete or meaningful joint pretrial materials because of the
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1 pendency of the cross-motions for summary judgment. The court is scheduled to hear
2 the cross-motions for summary judgment on May, 2, 2006, after which, depending on
3 how the court rules, only then will the parties will be able to provide an accurate and
4 meaningful Joint Pretrial Statement and other materials forthwith. For example, if the
5 court grants either motion in whole, the issue of trial may be moot entirely, as would be
6 the need for any pretrial materials. On the other hand, if the court grants either motion
7 in part, matters of proof, and consequently, the need for witnesses, documents and
8 exhibits, may be substantially altered from the current status quo, rendering
9 meaningless any pretrial materials premised upon the current status quo.

10 **2. Discovery Will Still Be Open After May 2**

11 Pursuant to the court's previous order designated Document 42 and filed on April
12 6, 2006, discovery as to damages is still open and allowed to continue until May 5,
13 2006, some three days after the current deadline for pretrial materials. Depositions
14 currently are set from May 2, 2006 to May 5, 2006. These depositions, and pending
15 written discovery responses between the parties, will not be completed and available for
16 consideration to enable the parties to narrow the issues or at least clarify the disputed
17 issues.

18 **3. Pretrial Materials Would be Incomplete and Not Helpful**

19 Until the court rules on the issues raised in the pending motions, the pretrial
20 materials that the parties would submit, absent a continuance as requested, certainly
21 would be incomplete and likely to be of limited help, either to the court or to the parties.
22 That is because the following issues will be shaped substantially by the court's ruling:
23 (a) the identification of the facts, if any, which the court finds to be material to the legal
24 insurance coverage issues, (b) whether any of those factual issues need to be decided
25 by a jury at trial and, if so, the identity of the witnesses that will be necessary at trial, (c)
26 what points of law the court finds might turn on determination of those factual issues, (d)
27 whether the parties therefore should submit proposed jury voir dire, jury instructions and
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1 jury verdict forms, and if so what those materials should contain, (e) which discovery
2 excerpts likely would be relevant at trial, and (f) the evidence that would be relevant at
3 trial as to the above issues still pending for possible determination by the court.

4 Wherefore, the parties respectfully make this very narrow and limited request
5 that the court extend the deadline to file the required pretrial materials to May 17, 2006.
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8 Dated: April 27, 2006

AARON & WILSON, LLP

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10 By _____
11 **TIMOTHY C. WILSON**
12 **Attorneys for Plaintiff**
13 **JAMES BOSCH**

14 Dated: April 27, 2006

LHB PACIFIC LAW PARTNERS, LLP

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16
17 By _____
18 **DAVID B. DEMO**
19 **Attorneys for Defendant**
20 **FIRST FINANCIAL INSURANCE**
21 **COMPANY**

1 Having read and considered the "Stipulation And Proposed Order Re 15-Day
2 Extension Of Deadline For Filing Pretrial Materials," and good cause appearing therefor,

3 **IT IS HEREBY ORDERED** that the parties' request is hereby granted as follows:

4 (1) The May 2, 2006 deadline for the parties to serve, file and/or
5 lodge all required pretrial materials other than motions in
6 limine and objections to evidence (as provided in the court's
7 "Order for Pretrial Preparation" dated April 29, 2005) is
8 hereby extended from May 2, 2006 to May 16, 2006 at 12:00
9 p.m. (noon);

10 (2) All motions in limine and objections to evidence shall be filed
11 no later than May 11, 2006. All responses to motions in
12 limine or objections to evidence shall be filed no later than
13 12:00 p.m. (noon) on May 16, 2006.

14 Except as expressly set forth herein, this Order does not alter any of the
15 other deadlines set forth in the Order for Pretrial Preparation.

16 **IT IS FURTHER ORDERED THAT the parties shall also submit courtesy**
17 **copies of the aforementioned documents to chambers no later than 12:00 p.m.**
18 **(noon) on May 16, 2006.**

19 IT IS SO ORDERED.

20 Dated: April 27, 2006

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22 SAUNDRA BROWN ARMSTRONG
23 United States District Judge
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